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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re LAYLA M., a Person Coming
Under the Juvenile Court Law.

B294291

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,
Plaintiff and Respondent,

Los Angeles County
Super. Ct. No. DK02144F

v.

DAVID D.,
Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Veronica S. McBeth, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles,
Assistant County Counsel, Stephanie Jo Reagan, Principal
Deputy County Counsel, for Plaintiff and Respondent.

David D. (father) appeals from juvenile court orders denying his petition to reinstate his family reunification services, and terminating his parental rights to Layla M. (Layla). We find no abuse of discretion in the juvenile court's conclusion that reinstatement of reunification services would not be in Layla's best interests and its termination of father's parental rights, and we affirm.

BACKGROUND

The Los Angeles Department of Children and Family Services (DCFS) filed a petition on January 13, 2017, when Layla was 16 months old. The juvenile court detained Layla and placed her in foster care. As amended February 16, 2017, the petition alleged that father and Layla's mother (who is not a party to this appeal) had a history of violent physical altercations, and in November 2016, father slapped mother's face, grabbed her neck, and strangled her until she lost consciousness. Father's violent conduct, and mother's failure to protect, endangered the health and safety of Layla and her five-month-old twin half-sisters¹ (who are not at issue in this appeal), under Welfare and Institutions Code² section 300, subdivisions (a), (b), and (j). Mother also had a history of substance abuse (marijuana and methamphetamines) which rendered her incapable of providing regular care for the children. Father had a history of criminal convictions and was a registered controlled substance offender, which placed the children at risk of harm.

¹ The petition identified father as the parent of mother's twin daughters, and a different man, N.M., as Layla's father.

² All subsequent statutory references are to the Welfare and Institutions Code.

When mother and father arrived at DCFS offices on January 10, 2107 to bring in Layla and the twins (pursuant to a warrant to detain the children), they agreed to an on-demand drug test. Both parents tested positive for high levels of amphetamine, methamphetamine, and cannabinoids.

Mother's half-sister Andrea O. told DCFS Layla had lived with her since she was two months old, at mother's request. Andrea O. and her live-in boyfriend wanted custody of Layla, and mother told the social worker she wanted Layla to be with Andrea O. DCFS placed Layla with Andrea O.

On January 23, 2017, the juvenile court ordered DCFS to provide father with referrals for parenting classes, domestic violence counseling for perpetrators, and weekly drug testing, and authorized two hours twice a week of monitored visitation.

The social worker met with father on February 6, 2017. He stated that his arguments with mother never were physical, denying that he had slapped and choked mother. Another woman had accused him of domestic violence four years ago and he had been arrested. He had used marijuana and methamphetamine daily since he was a teenager, but never when caring for the children, and he drank beer two or three times a week. He understood that he had a limited time to reunify and complete his programs, and if he failed to reunify and his services were terminated, the permanent plan for Layla included the possibility of adoption.

Father tested positive three times for methamphetamine in February and March 2017. He submitted to an assessment for a program on March 28 and tested positive for methamphetamine the next day.

Although the petition identified N.M. as Layla's father, and father as the parent of Layla's twin half-sisters, subsequent paternity testing established that father was Layla's biological father, and he was not the father of the twins. On April 3, 2017, when Layla was 19 months old, the juvenile court found that father was Layla's presumed father.

Father failed to appear for an April 21 drug test. He later told DCFS he was in jail from mid-April 2017 to early September 2017 ("I got caught with a meth pipe, so they charged me with gang injunction.'").

Father signed a waiver of rights and pleaded no contest to the allegations of the first amended petition. On June 12, 2017, the juvenile court found the allegations under section 300, subdivisions (a) and (b)(1) to be true, as modified to combine the domestic violence allegations as to all three children, and to remove the allegation that father's altercation with mother was violent. The court denied reunification services for mother, and ordered monitored visitation and reunification services for father, as well as drug testing while in custody.

Father's case plan required him to participate in a full drug and alcohol program with aftercare; random or on-demand drug and alcohol testing; a 12-step program with a court card and sponsor; parenting classes; a 52-week certified domestic violence program; and individual counseling with a licensed therapist or intern.

In December 2017, DCFS reported that a social worker met with father when he was released from jail early in September 2017, went over his case plan, and set up a visitation schedule with Layla and the twins (father still wanted to be involved in the twins' lives). Father visited the twins four times, and Layla

about five times. He then stopped calling to confirm visits; he told the social worker this was because he was working six days a week. In November 2017, father told the social worker he was no longer interested in custody of the twins but still wanted to reunify with Layla. As of December 2017, he still had not enrolled in any court-ordered programs. DCFS thus recommended that his family reunification services be terminated and a section 366.26 hearing be set. Meanwhile, Layla (now two years and three months old) was doing well in the care of Andrea O., who wanted to adopt her.

On February 1, 2018, father told the social worker that on January 3 he enrolled in a substance abuse program (including anger management, parenting classes, relapse prevention groups, and random testing). He did not think he had a current substance abuse problem. Father moved into a sober living facility in mid-January, had attended all but one of the meetings, and had eight negative drug tests (the last one on January 9). He was on a wait list for domestic violence counseling and had not enrolled in individual therapy. Although he had attended some AA meetings, he did not have a sponsor.

In January, father told the social worker that he had not missed any visits with Layla and they were going well. The social worker informed him that Andrea O. reported he was late, had been a no show, and had cancelled visits. Sometimes father left Layla for long periods to go to the bathroom or get food. Father denied all of this. The social worker put Andrea O. on a speakerphone, and they established a visitation schedule of two hours at a DCFS office every Thursday morning, and two hours at a McDonald's every Sunday morning.

On January 25, Andrea O. called the social worker to say that father had missed another visit, saying he had been sick all night, but did not call to cancel until she and Layla were at the visit location. During one visit, father inappropriately complained to Andrea O. in front of Layla that Layla was calling her “mom.” Layla had been having tantrums during the visits and throwing toys. When the social worker called father, he said he was going to tell Layla during the visit that he was her father and Andrea O. was not her mother. The social worker suggested this was better addressed in therapy and not during a visit, and father said the social worker was against him. When the social worker suggested he use the parenting skills he was learning and that Layla’s tantrums were normal for her age, father said he would bring the issue up at the next hearing.

The social worker made an unannounced visit to observe father’s next monitored visitation at the DCFS office. Father was sitting on the couch with his phone out, but put it away when he saw the social worker and got up to play hide and seek with Layla, who seemed bonded and comfortable with him. Father had not brought any toys or food to the visit. He accepted the social worker’s suggestions to notify Andrea O. in advance if he needed to cancel a visit, to seek advice from his parenting classes, and to bring activities for a productive visit, and he said he understood it would take some time to build a relationship with Layla.

On February 6, 2018, after reading the social worker’s report, the court terminated father’s reunification services because the extent of father’s progress in the case plan toward alleviating the circumstances requiring placement “ha[d] been

minimal,” and ordered DCFS to provide referrals for continued testing. Mother filed a section 388 petition.

The section 366.26 report stated that Andrea O. and her live-in boyfriend wanted to co-adopt Layla and were being assessed. Layla was thriving in Andrea O.’s home, with a strong bond to Andrea O. and her boyfriend, whom she called mother and father. Given Layla’s young age (nearly three) and her attachment to the caregivers she had known for almost all her life, the department recommended that Layla remain with Andrea O.

After the court terminated his reunification services, father continued to drug test with no missed or positive tests. Father had continued to visit Layla but had been late and cancelled some visits. Layla called father “Piti,” her word for people that she does not know, and sometimes got scared and cried when father played hide and seek. Andrea O. thought Layla was extremely attached to her and would not allow someone else to monitor father’s visits.

For his part, father said he found it hard to engage with Layla with Andrea O. monitoring the visit; Layla would not focus on the visit and would go to Andrea O. He thought Andrea O. was taking Layla away from him and not helping his relationship with her. In response, the social worker agreed to father’s request that she monitor father’s visits at the DCFS office. But Layla refused to let Andrea O. leave the room, and was upset and agitated until the social worker told her Andrea O. would be in the lobby with the door open. Layla engaged with father when he brought her things to play with, but the minute the social worker closed the door, Layla got very upset and almost cried. When the social worker tried to close the door

again, Layla got upset, threw toys on the floor, and tried to go into the lobby. Layla refused to return to the visit until the social worker let Andrea O. take over as monitor.

Father told the social worker he wanted to reunify with Layla, be a better father and provide for her, employed and drug-free. On August 8, DCFS informed the court that the home study for Andrea O. and her boyfriend had been approved, and DCFS recommended adoption. The court continued the section 366.26 hearing to combine it with a hearing on mother's section 388 petition, and gave father telephone visits with Layla at least once a week.

1. *Father's section 388 petition*

On September 10, 2018, Father filed a request to change the court's order terminating his reunification services. The changed conditions were that father had completed all necessary outpatient treatment requirements, and he visited with Layla consistently, putting work into learning parenting skills and addressing anger issues. He had a support system through his treatment and continued to work on his steps with his sponsor. The requested change would be better for Layla because Layla and father had formed a bond and enjoyed their visits, and "Layla will benefit from having a committed and loving father in her life." He attached letters describing his participation in services and copies of his negative random test results.

When DCFS interviewed father, he explained he had been sober since he left jail in September 2017, moving out of where he grew up and into a sober living home (where children were not allowed). He attended weekly AA/NA meetings, worked full time, and avoided all his past friends. His trigger for drug use was his family, so he stayed away from them. Father did not

understand why a drug test on August 13 was positive for alcohol because he had not had a drink since his arrest in April 2017. He had been visiting Layla twice a week but because of his work schedule it was now once a week. He acknowledged that his visits were sometimes difficult. Layla had lived with Andrea O. so long that most of the time she did not pay attention or listen to father. Andrea O. kept Layla on her lap, cutting into father's visitation time. Layla would sometimes scream and yell for no reason. "I really have not found a way to bond with her." Layla called him "Piti." Although she had started to give him a hug and kiss at the end of the visits, when he told Layla he was her father, she insisted, " ' "No, dad is at home." ' "

Father had stable employment and was trying to find his own place to live. Asked what had changed, he explained: "I messed up in the past, but that is in the past. I have changed my life around. I am not involved in any gang activities anymore. When I was using drugs, I was involved in a gang, but that is why I moved away." He wanted to get some of his tattoos removed. " 'I have a little girl to think about.' " He wanted Layla to be proud he was her dad.

Andrea O. told DCFS that Layla had been visiting father for a year since his release from jail, "and she still cries all the time." During the visits at McDonald's, she played with the other children and father did not engage with her; at the table, Layla told father not to look at her. When the social worker tried monitoring a visit, Layla ran out of the room looking for Andrea O. When father called, " '[s]he backs away from the phone and says that she doesn't want to talk.' " Andrea O. knew that father was hanging out with mother again, drinking a lot and even fighting with another couple, and she thought mother

was picking father up after his visits with Layla. Andrea O. thought it was in Layla's best interests to stay with her: " 'Her attachment to me is very strong,' " and Andrea O. wanted to adopt.

DCFS recommended the denial of father's section 388 petition. Father needed additional substance abuse treatment.

A birthday visit with Layla at Chuck E. Cheese went well, but Layla still resisted the visits and appeared distressed. Father tested negative for drugs in November 2018.

2. *Section 388 hearing*

At the hearing on November 27, 2018, father testified he had been sober for 20 months and had not had a drink or taken drugs since the day he was arrested in April 2017. He had learned from his programs "[t]o never give up, to set goals for myself, . . . but short goals" he could complete and then move on. He had a sponsor in Gardena but after an "incident happened," he moved to Long Beach and was looking for a sponsor there. He attended meetings once a week and was working on understanding how his disease started. Feeling neglected by his parents, he had looked to the streets for comfort. Now that he was sober he was happier than ever before, taking care of himself and being responsible.

Father's parenting class had taught him never to give up, and that his daughter didn't really know him, so he could not force her to accept that he was her father. "[S]he's really in and out. Sometimes it works, sometimes it doesn't." Although she sometimes acted out, Layla was getting to know him. In his domestic violence classes he had learned to remove himself from the situation and take a deep breath. Father had just moved out of sober living and was renting a room. His goal was to continue

with his classes, get a better job to save up for his own place, and reunite with his family. To stay sober, father planned to go to meetings, stay occupied, and go to bed early.

Father described his visits with Layla as “good,” if “a little rocky in the beginning.” He brought different activities and presents to each visit. “I’ve never done anything like this in my life, so I really don’t know what to do.” Layla was stuck to Andrea O. “like glue on paper” and wouldn’t let her out of her sight, but the recent visit monitored by the social worker was “wonderful.” He and Layla played house, she pretended to cook for him, and “she wasn’t holding back.” He never excluded Andrea O. He would prefer to visit Layla at the park or the beach, but Andrea O. was reluctant.

Father said what had changed was his “mind set.” He appreciated the classes he’d been required to take because, without them, he wouldn’t be where he was now. Without the dependency situation, “I think I would probably still be out there running around.” On cross-examination, father stated he had not been a couple with mother since the day of his arrest.

Father’s counsel argued the court should grant the petition. The changed circumstances were father’s completion of the drug outpatient program, his participation in AA, parenting and domestic violence programs, and individual counseling. Father showed “significant insight” and had worked through his problems and gotten his own place to live. Overall, “he’s doing much, much better.” As to Layla’s best interests, father was developing a relationship with her and putting work into it, although “[c]ertainly, we can’t say that the minor had a significant relationship with the father before the case. As he has said, he didn’t know he was her father until the case came

into the court.” It would be in Layla’s best interests “to continue to develop the relationship that she is having with her biological father.” Father had turned his life around.

Layla’s counsel agreed that father had made significant progress and was very reflective, but reunification would not be in Layla’s best interests. Father had admitted his bond with Layla was “very limited,” and even on his most recent visit he did not know how to bond with her. There had been no progress. Layla had a very strong bond with the caregivers she had known since she was a few months old, and it would not be in her best interests to provide more reunification services.

The juvenile court acknowledged that there was no doubt there had been “a very significant change in father’s circumstances.” It would have been in Layla’s best interests if the change in circumstances “had happened a couple years ago.” The court believed father’s testimony and it was admirable that father was sober and working and visiting Layla. But Layla had been with the caregivers since she was a few months old and saw them as her parents. While father was bending over backwards to have a relationship with Layla, by his own choice he visited only once a week, and the caregivers had to talk Layla into the visit every time. Father and Layla had not formed a bond, the visits still were monitored, and “I just don’t see how I could possibly find it’s in her best interest.” There was no showing that reunification was in Layla’s best interests, because “it would be like taking her away from her parents.” The court denied father’s section 388 petition, and denied mother’s as well.

3. *Section 366.26 hearing*

Andrea O. and her boyfriend, who were present, were willing to allow father to continue to visit with Layla, and

the court agreed visitation would be in Layla's best interests. Father could "be like a family member to all of them" and Layla would know that they all loved each other and cared about her. The court declared Layla adoptable and found it would be detrimental to return her to the parents, terminating father's and mother's parental rights.

Father filed a timely notice of appeal.

DISCUSSION

Under section 388, a party may petition the juvenile court to change, modify, or set aside a previous order of the court. The party filing the petition has the burden to show, by a preponderance of the evidence, a change of circumstances or new evidence, *and* that the proposed change to the order is in the best interests of the child over whom the court has jurisdiction. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) "The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*Ibid.*) Here, the juvenile court acknowledged that father showed changed circumstances; the question is whether the court abused its discretion in determining that setting aside the order that father's reunification services would be terminated would not be in Layla's best interests. (*Ibid.*)

We see no abuse of discretion given the record as described above. "[C]hildren have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306.) When a parent files

a section 388 petition on the eve of a section 366.26 hearing, the focus in determining the child's best interests is on the child's need for permanency and stability. (*In re J.C.* (2014) 226 Cal.App.4th 503, 526.) "[T]he interests of the parent and the child have diverged by the point of a [366].26 hearing to select and implement a child's permanent plan. . . . Adoption gives a child the best chance at a full emotional commitment from a responsible caretaker." (*Id.* at p. 527.)

Father did not know Layla was his biological daughter until just before his incarceration, when Layla was 19 months old. Layla had lived with Andrea O., mother's sister, since she was two months old. At three years, Layla was thriving in the home of Andrea O. and her live-in boyfriend, who had been approved to co-adopt Layla. Father, by contrast, was renting a room after recently moving out of a sober living facility. Much more would have to change before he could provide care for Layla.

Layla had a secure and deep attachment to Andrea O. and her boyfriend, calling them mother and father, and was developing normally in their care. Father's monitored visitation with Layla during the year and two months after his release was not entirely consistent. When he did visit once a week, he struggled to bond with Layla, who did not want to let Andrea O. out of her sight, or allow a social worker to monitor visitation. Layla called father "Piti," her name for people who were strangers, and cried and threw tantrums during the visits. Father admitted the visits were difficult and he had not found a way to bond with Layla.

Father did not show "how the best interests of th[is] young child[] would be served by depriving [Layla] of a permanent,

stable home in exchange for an uncertain future.” (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081.) The juvenile court did not abuse its discretion when it concluded that modifying the order terminating father’s reunification services was not in Layla’s best interests, and terminated father’s parental rights.

DISPOSITION

The November 27, 2018 orders are affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.